

REMARKS:

I. Status of the Claims

Claims 1-3 and 5-8 are pending in the application, and stand rejected by the outstanding Office Action. By the present Amendment, claim 1 has been amended. No new matter has been added by virtue of the present amendments. Favorable reconsideration is respectfully requested in light of the foregoing Amendments and following Remarks.

II. Finality of the Office Action

As an initial matter, Applicant respectfully submits that the finality of the outstanding Office Action is improper. The current grounds of rejection under 35 U.S.C. Sections 101 and 112 were not necessitated by Applicant's amendments. Indeed, the claim language in question has been pending. In the interest of timely and efficient prosecution (see MPEP §706.07(a)), the outstanding rejections should have, and could have, been previously made. Accordingly, the finality of the outstanding Office Action is respectfully submitted to be improper and Applicant hereby requests withdrawal of the finality and entry of the present Response and amendments.

III. Rejections under 35 U.S.C. §101

Claims 1-3 and 5-8 stand rejected under 35 USC §101 as being directed to non-statutory subject matter. Without conceding the appropriateness of the rejection, in the interest of expediting prosecution, by the present amendment, Applicant has amended independent claim 1 to recite the additional steps of:

maintaining an electronic database on a computer having memory;
and

storing information about the loans in the database

As such, the claim now recites a process tied to a particular apparatus, namely an electronic database. Such claimed subject matter is consistent with the case law cited in the Office Action, including *In re Comiskey* (characterizing Supreme Court precedent as recognizing processes tied to a particular apparatus as patentable subject matter). Also as pointed out in the Office Action, a claim encompassing both mental steps and one of the statutory classes of subject matter—here, a device—is also patentable subject matter. Unlike *Warmerdam*, the present claims do recite a machine, namely an electronic database.

Support for the present amendment can be found in the application as filed. For example, the application describes that: (i) the lending institution has a computer (paragraphs [0019] (“ a lending institution 10 having a computer 120 connectable to the network 100. The lending institution 10 may comprise a lender 12”) and [0020]); (ii) a computer includes memory (see paragraph [0016] (“A computer typically includes the following components: a central processing unit (CPU or processor) operable in connection with software, permanent memory (e.g., hard-disk drive, ROM), temporary memory (e.g., RAM) . . .”)); and (iii) a database is maintained on the lending institution’s computer (paragraph [0031] (“ a database maintained on the lender's computer 120; the database having stored therein all pertinent information about borrowers and loans.”)).

Accordingly, Applicant respectfully submits that independent claim 1, as well as all claims depending therefrom, recite patentable subject matter and requests withdrawal of the rejection.

IV. Rejections under 35 U.S.C. §112

Claims 1-3 and 5-8 stand rejected under 35 USC §112, second paragraph, as being indefinite.

In this regard, the Office Action points to the claim 1 phrase “transferring risk of loss other than the first loss” as lacking antecedent basis because the phrase “risk of loss other than the first loss” has not been defined. Without conceding the merits of the rejection, Applicant has amended the claim to now recite “a risk of loss other than the first loss.” Thus, Applicant respectfully submits that the phrase does not lack antecedent. Moreover, the phrase is not indefinite because the phrase is defined by the term “the first loss,” which is introduced in the preamble and also has antecedent basis.

The Office Action also points to the phrase “the entity having a second rating greater than the first rating or no rating” as being indefinite because it is unclear what the second rating is greater than. Applicant respectfully submits that the language is definite but in the interest of expediting prosecution, Applicant has amended claim 1 to remove the alternative language, so that claim 1 now recites “the entity having a second rating greater than the first rating.”

The Office Action also points to the language “the lending institution receiving proceed” as indefinite because it is unclear whether the proceeds are the same proceeds that are “in an amount greater than that which the lending institution could secure” Similarly, the Office Action questions whether the loans being funded are the same loans are transferred. Applicant respectfully submits that the language is definite but in the interest of expediting prosecution, Applicant has amended claim 1 to recite “the proceeds” and “the loans” thus indicating that the proceeds are the same and the loans are the same.

It should be understood that the claim preamble uses the “comprising” transition, thus indicating that other steps and/or elements may be used. Thus, for example, although a pool of loans are transferred and funded, other loans that are transferred but not funded may exist. Similarly, not all moneys received by the lending institution need be considered proceeds within the meaning of the claim.

Accordingly, Applicant respectfully submits that all of the §112 rejections have been addressed and overcome, and requests withdrawal thereof.

Accordingly, Applicant respectfully submits that claim 1, as well as claims 2-3 and 5-8, which depend therefrom, recite patentable subject matter, are definite and, the examiner having not maintained a rejection over the prior art, are in condition for allowance.

CONCLUSION:

Applicant thus believes that the claims in the present application are in condition for allowance. Applicant respectfully request reconsideration of the present application in view of the foregoing remarks. If the Examiner has any questions or suggestions regarding this response or the application, she is invited to contact the undersigned at the telephone number provided below.

Other than the fees for extension of time, no additional fees are believed due for this submission. If however, the Commissioner deems otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

Respectfully submitted,

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